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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/057,580	01/24/2002	Earl Roger Singleton	S146 1070.1	1811

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EXAMINER

UPTON, CHRISTOPHER

ART UNIT	PAPER NUMBER
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1724

DATE MAILED: 06/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

057580

Applicant(s)

Singleton et al

Examiner

Upm

Group Art Unit

1724

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- ☐ Responsive to communication(s) filed on _____
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

☒ Claim(s) 1-17

Of the above claim(s) _____ is/are pending in the application.

- ☐ Claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-17 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some* ☐ None of the:
 - ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____
 - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 2
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

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1. No copy of the 1997 "Curb Inlet Filter" publication was received with the information disclosure statement. A copy is requested, in order that it may be considered.

2. Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 10 is vague and indefinite, because if the filter material has a first and second end, as recited in claim 1, it cannot extend beyond the ends, as recited in claim 10. The structure should be clarified.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 1-3, 8-11 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by the "Curb Inlet Filter" document.

The "Curb Inlet Filter" document discloses a tube of filter material enclosing concrete blocks. It is submitted that this material forms both a weighting and support material, as recited in the claims. With respect to claims 8-11, it is submitted that the structure forms a "bag," as claimed.

5. Claims 4-6 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over the "Curb Inlet Filter" document.

Claims 4-6 and 13 differ from the "Curb Inlet Filter" document in recitation of the materials being polymer, such as geotextile, geogrid and polyethylene. It is submitted that these are well known and readily commercially available filtering means, and therefore fail to patentably distinguish over the document, as the document discloses filter fabric or plastic mesh in general.

6. Claims 1, 2, 8 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Strawser.

Strawser discloses a filter tube having weighted ends with sandbags at the ends, as claimed, in prior art figures 2 and 3.

7. Claims 3-5, 7, 11, 12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Strawser in view of Beane or Sixt et al.

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Claims 3, 5, 7, 11, 12 and 14 differ from Strawser in recitation of a support element of polymeric tubing. It is well known to support mesh filters in such a manner, as disclosed by Beane and Sixt. It would therefore have been obvious for one of ordinary skill in the art to add such a support to the filter of Strawser, to support the filter and prevent it from deforming.

Claim 4 further differs in recitation of geotextile filtering material. It is submitted that this is a well known filtering material, and therefore fails to patentably distinguish over Strawser.

8. Claims 6, 13 and 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1, 3, 5-9 and 11 above, and further in view of Schmidt Jr.

Claims 6 and 13 differ from claims 5 and 11 in recitation of a polymeric grid within the filter sleeve. It is known to support a filter by a combination of a pipe and a plastic grid, as exemplified by the two Schmidt patents. It would therefore have been obvious for one of ordinary skill in the art to add such a grid to the filter of the references applied to claims 5 and 11, to improve flow through the filter. With respect to claim 6, which specifies polyethylene, it is submitted that this is a well known plastic, which may therefore obviously be used as the general plastic of the Schmidt patents. It is further submitted that the filter tubes of Beane and Sixt are polyethylene.

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Claim 15 is an independent claim, essentially reciting the subject matter of claims 1, 3, 7 and 13; while claims 16 and 17 essentially recite the subject matter of claims 8 and 9. These claims are rejected for the reasons applied to these claims, above.

9. Claims 1-5, 11, 13 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Chinn.

Chinn discloses a filter tube of geotextile covering an inner matting material supported by a polypropylene mesh, thus forming a support for the geotextile, with a weighting means, as claimed.

10. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chinn.

Claim 6 differs from Chinn in recitation of the grid being polyethylene. It is submitted that polyethylene and polypropylene are similar plastic materials, and that therefore, the use of polyethylene in the device of Chinn fails to patentably distinguish over the reference. Note also that Chinn discloses that the filter "may be" made of the materials specified, therefore rendering the use of other, similar materials obvious.

11. Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chinn in view of Strawser.

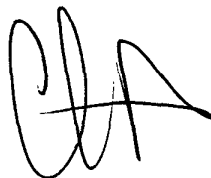
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Claims 8-10 differ from Chinn in recitation of the weight being sandbags extending beyond the filter ends. It is submitted that such a weighting system for a similar filter is known, as exemplified by Strawser, and would therefore have been an obvious alternative weighting system for the device of Chinn, as Chinn discloses that weighting systems other than metal straps may be used (column 3, lines 4-7). With respect to claim 10, which recites that the bags are formed by the filter material, it is submitted that this would have been obvious when using such a system to weight the device of Chinn, due to the disclosure of Chinn being a filter containing another material.

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Other references of interest include Slater, Singleton, Mossburg, Emery, Middleton and Jackson.

13. Any inquiry concerning this communication should be directed to Christopher Upton at telephone number (703) 308-3741.



**CHRISTOPHER UPTON
PRIMARY EXAMINER**